



[4410-05P]

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 552

[BOP-1162-P]

RIN 1120-AB62

Searches of Housing Units, Inmates, and Inmate Work Areas: Use of X-ray Devices - Clarification of Terminology

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed Rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to clarify that body imaging search devices are "electronic search devices" for routine or random use in searching inmates, and are distinguished from medical x-ray devices, which require the inmate's consent, or Regional Director approval, for use as search devices.

DATES: Comments are due by [insert date 60 days after publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

SUPPLEMENTARY INFORMATION:

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Proposed Rule

The Bureau proposes to amend its regulation on searches of inmates using x-ray devices and technology (28 CFR part 552, subpart B). We propose to change this regulation to clarify that body imaging search devices are "electronic search devices" for routine or random use in searching inmates, and are distinguished from medical x-ray devices, the use of which require the inmate's consent, or Regional Director approval, for use as search devices.

Section 552.11 Searches of inmates. The Bureau's regulation on searching inmates using electronic devices

currently lists only metal detectors and ion spectrometry devices as examples of such devices. We now propose to clarify that the provision for "electronic search devices" includes the use of body imaging search devices which use x-ray technology, but which are functionally different from medical x-ray devices as described in § 552.13.

Section 552.13 Medical x-ray device, major instrument, or surgical intrusion. To conform with the change made in § 552.11, we likewise propose to alter § 552.13 to further clarify that body imaging search devices are functionally different from the medical x-ray devices as described in this regulation. To do this, we remove the generic term "x-ray" and replace it with "medical x-ray device" in § 552.13.

We also revise § 552.13(a) to delete the term "fluoroscope." It is inaccurate to state that the Bureau uses fluoroscopes in the same way as major instruments (including anoscope or vaginal speculum) or surgical intrusion (i.e., only for medical reasons and with the inmate's consent). In fact, as we continue to state in subparagraph (b), medical x-rays devices such as fluoroscopes are also used to detect contraband under specifically delineated circumstances: Only when "determined

necessary for the security, good order, or discipline of the institution," and only "upon approval of the Regional Director."

Except for the change in terminology from "x-ray" to "medical x-ray device", the remainder of § 552.13 is unchanged.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that

this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects 28 CFR Part 552

Prisoners.

Charles E. Samuels, Jr.
Director, Bureau of Prisons

Accordingly, under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we propose to amend 28 CFR part 552 as set forth below.

SUBCHAPTER C - INSTITUTIONAL MANAGEMENT

PART 552 - CUSTODY

1. Revise the authority citation for 28 CFR part 552 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Revise § 552.11(a) to read as follows:

§ 552.11 Searches of inmates.

(a) Electronic devices. Inspection of an inmate's person using electronic devices (for example, metal detector, ion spectrometry device, or body imaging search device) does not require the inmate to remove clothing. The inspection may also include a search of the inmate's clothing and personal effects. Staff may conduct an electronic device search of an inmate on a routine or random basis to control contraband.

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3. Revise § 552.13 to read as follows:

§ 552.13 Medical x-ray device, major instrument, or surgical intrusion.

(a) The institution physician may authorize use of a major instrument (including anoscope or vaginal speculum) or surgical intrusion for medical reasons only, with the inmate's consent.

(b) The institution physician may authorize use of a medical x-ray device for medical reasons and only with the consent of the inmate. When there exists no reasonable alternative, and an examination using a medical x-ray device is determined necessary for the security, good order, or discipline of the institution, the Warden, upon approval of the Regional Director, may authorize the institution physician to order a non-repetitive examination using a medical x-ray device for the purpose of determining if contraband is concealed in or on the inmate (for example: in a cast or body cavity). The examination using a medical x-ray device may not be performed if it is determined by the institution physician that it is likely to result in serious or lasting medical injury or harm to the inmate. Staff shall place documentation of the examination and the reasons for the examination in the inmate's central file and

medical file.

(1) The Warden and Regional Director or persons officially acting in that capacity may not redelegate the authority to approve an examination using medical x-ray device for the purpose of determining if contraband is present. An Acting Warden or Acting Regional Director may, however, perform this function.

(2) Staff shall solicit the inmate's consent prior to an examination using a medical x-ray device. However, the inmate's consent is not required.

(c) The Warden may direct searches of inanimate objects using a medical x-ray device where the inmate is not exposed.

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